

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

In re: Packaged Ice Antitrust Litigation)	
)	MDL 08-md-01952
_____)	
)	THE HONORABLE PAUL D. BORMAN
This Document relates to:)	UNITED STATES DISTRICT JUDGE
)	
ALL ACTIONS)	
_____)	

**INDIRECT PURCHASER PLAINTIFFS' MOTION FOR
APPOINTMENT OF LEAD COUNSEL FOR THE INDIRECT PURCHASER CLASS**

NOW COME plaintiffs, Jan Barranco-Grams, Marcellino E. Bryant, Jennin Gil, Jeff Manry, Thomas F. Prazan, Patrick Reeners, Wayne Sydor, James Taylor, Jenifer Valencia, and Tommy Williams ("Indirect Purchaser Plaintiffs"), through counsel, and pursuant to the Court's Order of November 10, 2008, as their Motion for Appointment of Lead Counsel for the Indirect Purchaser Class, and, alternatively, appointment of Lead Counsel for the Indirect Purchaser Class and an Indirect Purchaser Class Executive Committee, state as follows:

1. This litigation was initiated as a result of the alleged illegal conduct of defendants Arctic Glacier Income Fund, Arctic Glacier International, Inc., Reddy Ice Holdings, Inc., and Home City Ice Company (collectively "Defendants"), in conspiring to fix prices, allocating markets and territories, and committing other anticompetitive practices with the purpose and effect of unlawfully fixing, raising, maintaining, and/or stabilizing prices of packaged cubed, crushed, block, and dry ice ("Packaged Ice") sold in the United States and Canada.

2. The cases of Indirect Purchaser Plaintiffs now before the Court are believed to be the all of the cases that brought claims on behalf of indirect purchasers as a result of the complained-of conduct.
3. For the reasons stated in the accompanying Memorandum in Support of the Motion for Appointment of Lead Counsel for the Indirect Purchaser Class, Indirect Purchaser Plaintiffs propose that Ben Barnow, Barnow and Associates, P.C., be appointed Lead Counsel for the putative Indirect Purchaser Class.
4. Ben Barnow has considerable experience in handling indirect purchaser class actions and consumer class actions in general, is familiar with the applicable law, and has the ability to commit the necessary resources to this matter. Thus, the proposed appointment of Ben Barnow, Barnow and Associates, P.C., as Lead Counsel for the putative Indirect Purchaser Class satisfies the requirements for such a role and serves the goals of such a designation.
5. Ben Barnow has never been subjected to disciplinary proceedings, suspended from the practice of law, or disciplined in any way as a result of grievances filed against him.
6. Indirect Purchaser Plaintiffs also suggest, should the Court deem it appropriate at this time, that the Court consider appointing an Indirect Purchaser Class Executive Committee. It is respectfully suggested that the Indirect Purchaser Class Executive Committee should be comprised of the following attorneys and their firms:
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- b. Larry D. Drury
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- e. Ralph K. Phalen
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7. This motion has not provided for a Liaison Counsel. However, proposed Lead Counsel for the putative Indirect Purchaser Class is not prohibitively distant from the Court's location and it is believed the liaison function can be handled through the Lead Counsel appointment. Should the Court nonetheless desire a Liaison Counsel for Indirect Purchaser Plaintiffs, upon the Court's request, a recommendation for that position will be provided.

CONCLUSION

For the foregoing reasons, Indirect Purchaser Plaintiffs respectfully request that the Honorable Court appoint Ben Barnow, Barnow and Associates, P.C., as Lead Counsel for the putative Indirect Purchaser Class, and alternatively, appointment of Lead Counsel for the Indirect Purchaser Class and an Indirect Purchaser Class Executive Committee comprised of Charles Barrett, Larry D. Drury, Lance A. Harke, Mark A. Maasch, and Ralph K. Phalen, and their

respective law firms, with Lead Counsel as the Chairman of the Indirect Purchaser Class

Executive Committee.

Jan Barranco-Grams, Marcellino E. Bryant, Jennin Gil, Jeff Manry, Thomas F. Prazan, Patrick Reeners, Wayne Sydor, James Taylor, Jenifer Valencia, and Tommy Williams, individually and on behalf of all others similarly situated,

By: /s/ Ben Barnow
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**INDIRECT PURCHASER PLAINTIFFS' MEMORANDUM
IN SUPPORT OF THEIR MOTION FOR APPOINTMENT
OF LEAD COUNSEL FOR THE INDIRECT PURCHASER CLASS**

NOW COME plaintiffs, Jan Barranco-Grams, Marcellino E. Bryant, Jennin Gil, Jeff Manry, Thomas F. Prazan, Patrick Reeners, Wayne Sydor, James Taylor, Jenifer Valencia, and Tommy Williams ("Indirect Purchaser Plaintiffs"), through counsel, and pursuant to the Court's Order of November 10, 2008, respectfully submit this Memorandum in Support of their Motion for Appointment of Lead Counsel for the Indirect Purchaser Class, and, alternatively, appointment of Lead Counsel for the Indirect Purchaser Class and an Indirect Purchaser Class Executive Committee, and state as follows:

I. INTRODUCTION

This litigation was initiated as a result of the alleged illegal conduct of defendants Arctic Glacier Income Fund, Arctic Glacier International, Inc., Reddy Ice Holdings, Inc., and Home City Ice Company (collectively "Defendants"), in conspiring to fix prices, allocating markets and territories, and committing other anticompetitive practices with the purpose and effect of unlawfully fixing, raising, maintaining, and/or stabilizing prices of packaged cubed, crushed, block, and dry ice ("Packaged Ice") sold in the United States and Canada. As a result of paying non-

competitive prices for Packaged Ice products, Indirect Purchaser Plaintiffs seek damages on their own behalf and on behalf of the putative Indirect Purchaser Class. Indirect Purchaser Plaintiffs brought, *inter alia*, antitrust claims pursuant to various state repealer statutes¹, and claims for unjust enrichment. To the knowledge of counsel for Indirect Purchaser Plaintiffs, to date, no other attorneys have filed a motion for appointment as lead counsel for indirect purchasers; the known filings to date have only sought appointment as lead counsel for direct purchasers. The cases of Indirect Purchaser Plaintiffs represented by this motion and this memorandum are believed to be all of the cases that brought claims on behalf of indirect purchasers as a result of the complained-of conduct.

For the reasons stated below, it is respectfully suggested that Ben Barnow, Barnow and Associates, P.C., be appointed Lead Counsel for the putative Indirect Purchaser Class. Respectfully, his experience in class actions generally, indirect purchaser class action litigation, and Multi-District Litigation support the requested appointment.

II. APPOINTMENT OF LEAD COUNSEL FOR INDIRECT PURCHASER PLAINTIFFS WILL AID THE COURT'S MANAGEMENT OF THIS COMPLEX LITIGATION.

Rule 23(g) of the Federal Rules of Civil Procedure states that in appointing class counsel, a court must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;

¹The U.S. Supreme Court ruling in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), precludes indirect purchasers from asserting claims under the Sherman Act. State statutes that allow indirect purchaser claims are commonly referred to as repealer statutes because they repeal the effect of *Illinois Brick*.

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). Additionally, a court may consider “any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B).

Proposed Lead Counsel for the putative Indirect Purchaser Class has considerable experience in handling indirect purchaser class actions and consumer class actions in general, as well as MDL matters, is familiar with applicable law, and has the ability to commit the necessary resources to this matter. The cases he has organized, led and participated in evidence a willingness and ability to work cooperatively and efficiently with counsel, both plaintiffs and defendants. Thus, the proposed appointment of Ben Barnow, Barnow and Associates, P.C., as Lead Counsel for the putative Indirect Purchaser Class satisfies the requirements for such a role and serves the goals of such a designation.

A. Proposed Lead Counsel for the putative Indirect Purchaser Class has already committed time and resources to this litigation.

Beginning on March 24, 2008, plaintiffs’ counsel supporting this motion, on behalf of their respective plaintiffs, filed eight (8) cases, representing ten (10) indirect purchaser plaintiffs,² that have been transferred to the Court. *See* Exhibit A, list of Indirect Purchaser Cases. These are believed to be all of the cases transferred to the Court addressing the claims of indirect purchasers. Proposed Lead Counsel for the putative Indirect Purchaser Class has worked on this action since its inception, including investigating the facts surrounding the action, researching

² Plaintiffs have brought their claims individually and on behalf of members of a putative Indirect Purchaser Class.

legal claims, identifying appropriate defendants, and communicating with other plaintiffs' attorneys regarding the most efficient manner to organize plaintiffs' counsel and efficiently advance the litigation. Proposed Lead Counsel for Indirect Purchaser Plaintiffs has drafted and is prepared to file a Consolidated Class Action Complaint of Indirect Purchasers once the Court enters a scheduling order allowing for the filing of that pleading. The fact that proposed Lead Counsel for the putative Indirect Purchaser Class has organized and garnered the support of the plaintiffs' attorneys listed below weighs in favor of granting the Motion.

Thus, the requirements of Fed. R. Civ. P. 23(g)(1)(A)(i) and (iv) are satisfied.

B. Proposed Lead Counsel for the putative Indirect Purchaser Class has experience in class actions and extensive knowledge of antitrust law pertaining to indirect purchasers.

Courts appointing lead counsel have placed great emphasis on proposed class counsel's experience and knowledge of the applicable law. *See generally In Re Toys R Us Antitrust Litig.*, 191 F.R.D. 347, 351 (E.D.N.Y. 2000) ("Class counsel are highly skilled and experienced and can fairly and adequately represent the interests of the class."); *In re Cree, Inc. Sec. Litig.*, 219 F.R.D. 369, 373 (M.D.N.C. 2003) (appointing class counsel in a securities case where the firm had "extensive experience in representing institutional investors in securities actions throughout the country and . . . long been heavily engaged in securities and corporate litigation.").

Proposed Lead Counsel for the putative Indirect Purchaser Class has extensive experience, not only with consumer class actions and class actions generally, but also with indirect purchaser antitrust litigation. *See* resume of Ben Barnow, attached hereto as Exhibit B. Mr. Barnow was one of Class Counsel in a number of the state Microsoft civil antitrust cases where he organized, joined with, and led and worked with other attorneys in such cases. Exhibit B, Barnow Resume at ¶ 12. He was also appointed to Plaintiffs' Lead Counsel Committee in the

Microsoft Multi-District Litigation (“MDL”) proceedings pending before the Honorable J. Frederick Motz, in the U.S. District Court for the District of Maryland. *Id.*

In MDL cases, Mr. Barnow has been appointed as one of lead counsel on a number of occasions. Said appointments include the *TJX Retail Security Breach Litigation* before the Honorable William G. Young (appointed via settlement agreement), the *M3Power Marketing Practices Litigation* before the Honorable Douglas P. Woodlock, the *High Sulfur Content Gasoline Products Liability Litigation* before the Honorable Ivan L.R. Lemelle, and, as mentioned above, the *Microsoft Civil Antitrust Litigation* before the Honorable J. Frederick Motz (appointed to Plaintiffs’ Lead Counsel Committee). Exhibit B, Barnow Resume at ¶¶ 12, 19, 20, and 22. Although not an MDL, he recently organized, with his settlement Co-Lead Counsel, all of the cases pending in the *Certegy Check Servs., Inc.* litigation before the Honorable Steven D. Merryday. *Id.* at ¶ 23. Earlier this year, he was invited to speak at Tulane University Law School’s symposium on *The Problem of Multidistrict Litigation*, held on February 15–16, 2008, where he was a member of a panel addressing “The Practicalities of Multidistrict Litigation.”

As his past experience shows, Proposed Lead Counsel for the putative Indirect Purchaser Class has demonstrated that he can and will commit the resources necessary to conduct this litigation in a manner which ensures that members of the putative Indirect Purchaser Class will receive the best possible representation and that he has a proven ability to coordinate and work with other counsel. Thus, the requirements of Fed. R. Civ. P. 23(g)(1)(A)(ii) and (iii) are satisfied. And, in response to the Court’s request for certain information, Proposed Lead Counsel for the putative Indirect Purchaser Class has never been subjected to disciplinary proceedings, suspended from the practice of law, or disciplined in any way as a result of grievances filed against him.

III. APPOINTMENT OF AN INDIRECT PURCHASER CLASS EXECUTIVE COMMITTEE.

While the Court's Order of November 10, 2008, sought applications for Lead Counsel, should the Court deem it appropriate at this time, it is respectfully suggested that the Court also consider appointing an Indirect Purchaser Class Executive Committee. The Indirect Purchaser Class Executive Committee would be comprised of the following attorneys and their respective law firms:

- a. Charles Barrett
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- b. Larry D. Drury
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- e. Ralph K. Phalen
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1000 Broadway, Suite 400
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These attorneys are experienced counsel. Their resumes are attached hereto as Group Exhibit D. They have represented that they have never been subjected to disciplinary proceedings, suspended from the practice of law, or disciplined in any way as a result of

grievances filed against them. They each have pending cases in the proceedings; these attorneys represent the plaintiffs in *Williams v. Arctic Glacier Income Fund, et al.* (transferred from the District of Arizona), *Barranco-Grams v. Reddy Ice Holdings, Inc., et al.* (transferred from the Southern District of California), *Gil v. Arctic Glacier Income Fund, et al.* (transferred from the Southern District of Florida), *Valenica v. Arctic Glacier Income Fund, et al.* (transferred from the District of Kansas), *Prazan v. Arctic Glacier Income Fund, et al.* (transferred from the District of Nebraska), *Manry v. Arctic Glacier Income Fund, et al.* (transferred from the District of New Mexico), *Bryant and Reeners v. Arctic Glacier Income Fund, et al.* (transferred from the Middle District of Tennessee), and *Taylor and Sydor v. Arctic Glacier Income Fund, et al.* (transferred from the Southern District of Florida).

IV. THE PROPOSED ORDER(S).

Movant has attached two (2) proposed orders, one providing for the appointment of Lead Counsel for the putative Indirect Purchaser Class and the other providing for appointment of Lead Counsel for the putative Indirect Purchaser Class and the proposed Indirect Purchasers Executive Committee. *See* Exhibits D and E, attached hereto. The Court's ruling will determine the appropriate one to be entered. Movant has not provided for a Liaison Counsel. However, proposed Lead Counsel for the Indirect Purchaser Class is not prohibitively distant from the Court's location and is prepared to fill that function. Should the Court nonetheless desire a Liaison Counsel for Indirect Purchaser Plaintiffs, upon the Court's request, a recommendation for that position will be provided.

CONCLUSION

For the foregoing reasons, Indirect Purchaser Plaintiffs respectfully request that the Honorable Court appoint Ben Barnow, Barnow and Associates, P.C., as Lead Counsel for the

putative Indirect Purchaser Class and, alternatively, appoint Ben Barnow, Barnow and Associates, P.C., as Lead Counsel for the putative Indirect Purchaser Class and appoint an Indirect Purchaser Class Executive Committee comprised of Charles Barrett, Larry D. Drury, Lance A. Harke, Mark A. Maasch, and Ralph K. Phalen, and their respective law firms, with Lead Counsel as the Chairman of the Indirect Purchaser Class Executive Committee.

Jan Barranco-Grams, Marcellino E. Bryant, Jennin Gil, Jeff Manry, Thomas F. Prazan, Patrick Reeners, Wayne Sydor, James Taylor, Jenifer Valencia, and Tommy Williams, individually and on behalf of all others similarly situated,

By: /s/ Ben Barnow
Ben Barnow, One of the Attorneys for the
Indirect Purchaser Plaintiffs

Proposed Lead Counsel for the
putative Indirect Purchaser Class:

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

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